

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

DENNIS LEWIS, MARK SELVAGGIO,
MARY SELVAGGIO, ANTHONY SELVAGGIO,
GARY NEVINS, MICHELE NEVINS, JAMES R.
SCHUETT, HARRY ALTON, DORIS ALTON,
BERNIE E. MYLER, LINDA R. MYLER, and
JAMES HAUSMAN, on behalf of themselves and
all others similarly situated,

Plaintiffs,

vs.

CIB MARINE BANCSHARES, INC., JOSE
ARAUJO, JOHN MICHAEL STRAKA a/k/a J.
MICHAEL STRAKA, DONALD M. TRILLING,
DEAN M. KATSAROS, W. SCOTT BLAKE,
NORMAN E. BAKER, HOWARD E.
ZIMMERMAN, STEVEN T. KLITZING, and
DONALD STRAKA,

Defendants.

No. 05-1008

**PLAINTIFFS' MEMORANDUM IN SUPPORT OF THE MOTION FOR
PRELIMINARY APPROVAL**

COME NOW Plaintiffs Dennis Lewis, *et al.*, by two of their attorneys, Joseph W. Phebus and Daniel J. Pope of the firm of Phebus & Koester and submit this Memorandum in further support of the motion for preliminary approval of the proposed class action settlement herein. In that motion, the court has been asked to (i) preliminarily certify this matter as a class action for settlement purposes, (ii) preliminarily appoint Joseph W. Phebus as lead counsel and Daniel J. Pope, both of Phebus & Koester; Douglas J. Phebus and Peggy Lautenschlager of Lawton and Cates, Thomas Leiter and Samuel Zabek of the Leiter Group, and Kristi L. Browne of the Patterson Law Firm, P.C. as class counsel for settlement purposes; and (iii) preliminarily appoint Dennis Lewis as lead class representative for settlement purposes, and Mark

Selvaggio, Mary Selvaggio, Anthony Selvaggio, Gary Nevins, Michele Nevins, James R. Schuett, Doris Alton, Bernie Myler, Linda Myler, James Hausman, and Steven E. Morgan as class representatives for settlement purposes.

1. Subject to court approval, the Plaintiffs and the Defendants have entered into a stipulation and agreement of settlement under which for settlement purposes only they have requested preliminary certification of a class as follows:

All persons and entities who purchased common stock of CIB Marine Bancshares, Inc. during the period between January 21, 2000 and April 12, 2004 inclusive (including those who acquired CIB stock in exchange for stock in Citrus Financial Services, Inc., or another corporation).

Excluded from the class are the Defendants, members of their immediate families, any entity in which any defendant had a controlling interest, and the legal representatives, heirs, controlling persons, successors, predecessors in interest, or assigns of any such excluded party.

2. The Plaintiffs' attorneys should be preliminarily appointed class counsel because *inter alia*:

- a. The Plaintiffs' attorneys have performed substantial work in identifying and investigating the claims asserted;
- b. The Plaintiffs' counsel are experienced in handling class actions and other complex litigation and the types of claims asserted in this action;
 - i. Attached hereto as Exhibit A is the firm class action resume of Phebus & Koester along with the vitae of Joseph W. Phebus and a vitae of Daniel J. Pope;
 - ii. Attached hereto as Exhibit B are the vitae of Douglas J. Phebus and Peggy Lautenschlager;
 - iii. Attached hereto as Exhibit C is the firm resume of the Leiter Group which contains information as to Mr. Leiter

and Mr. Zabek and the vitae of Thomas Leiter and Samuel B. Zabek;

iv. Attached hereto as Exhibit D is the vitae of Kristi L. Browne.

c. Plaintiffs' counsel have demonstrated knowledge of the applicable law and have, heretofore, demonstrated the resources and commitment to adequately represent the class.

3. Plaintiff Dennis Lewis should be preliminarily appointed lead class representative and Mark Selvaggio, Mary Selvaggio, Anthony Selvaggio, Gary Nevins, Michele Nevins, James R. Schuett, Doris Alton, Bernie Myler, Linda Myler, James Hausman, and Steven E. Morgan as class representatives for the purpose of settlement in that they have demonstrated an adequate financial interest in the proceeding as set forth in their affidavits heretofore filed and a knowledge of the duties of a class representative. Further, they assert the same claims as the claims asserted on behalf of the proposed class members, they possess no conflict as to the claims asserted and have verified their knowledge of the duties of a class representative in representing in a signed statement that each of them understands:

- a. A class action is a lawsuit brought by individuals on a representative basis, on behalf of others similarly situated, to obtain equitable relief and/or damages for the benefit of the group as a whole.
- b. A class representative represents the interests of all members similarly situated in the litigation.
- c. A class member has claims which are typical of those of the class/subclass, and thus involve common issues of law or of fact. As a

class representative, your claims against the defendants must be typical of the class/subclass claims against them.

- d. A class representative must consider the interests of the class/subclass just as he/she would consider his/her own interests.
- e. A class representative participates actively in the lawsuit, and may be asked to testify at deposition and trial, answer written interrogatories, and keep generally aware of the status and progress of the lawsuit.
- f. A class representative recognizes and accepts that any resolution of a class action lawsuit, such as by settlement or dismissal, is subject to court approval, and must be designed in the best interests of the class as a whole.
- g. A class representative is not required to be particularly sophisticated or knowledgeable with respect to the legal framework of the lawsuit. However, he/she should be interested in the progress of the lawsuit and must provide his/her lawyers and the court with all relevant facts of which he/she is aware.
- h. A class representative volunteers to represent other people with similar claims and damages because he/she believes that it is important that all benefit from the lawsuit and because he/she believes that a class lawsuit will save time, money and effort, and thus will benefit all parties and the court.

Further, lead Plaintiff Lewis, and Plaintiffs James Hausman, Mark Selvaggio, and James Schuett all attended a mediation proceeding which required travel to either Chicago or Milwaukee from Central Illinois.

4. Preliminary approval should further be granted based on the court's preliminary determination that the requirements of Rule 23(a) of the Federal Rules of Civil Procedure are met in that:

- a. There are over 1,000 putative class members, which demonstrates that the class is so numerous that joinder of all members would be impracticable;
- b. There are questions of fact and/or law common to the class including whether or not the Defendants or certain of them violated Section 10(b) of the Securities Exchange Act or Rule 10b-5 of the Securities Exchange Commission or Section 20(a) of the Securities Exchange Act;
- c. The claims of the Plaintiffs/Class Representatives are based on the same alleged acts of Defendants and are grounded upon the same statutes as the class members' claims.
- d. As noted above, the class representatives will fairly and adequately protect the interests of the class.
- e. A preliminary finding that the requirements of Rule 23(b)(3) are met for purposes of the proposed class settlement is also proper in that:
 - i. Because this is a proposed certification for purposes of settlement, no showing is required on the issue of whether

common questions of law and/or fact predominate over questions affecting only individual members; and

- ii. In the context of this proposed settlement, a class action is superior to other methods for fairly and efficiently adjudicating a controversy in that the class members can be identified and recovery allocated to them based upon the terms of the settlement and thus for settlement purposes the class action is manageable.

DENNIS LEWIS, *et al.*, Plaintiffs, by two of their attorneys, Joseph W. Phebus and Daniel J. Pope of PHEBUS & KOESTER

By: s/Joseph W. Phebus
JOSEPH W. PHEBUS
PHEBUS & KOESTER
136 West Main Street
Urbana, Illinois 61801
(217) 337-1400
jwphebus@phebuslaw.com

By: s/Daniel J. Pope
DANIEL J. POPE
PHEBUS & KOESTER
136 West Main Street
Urbana, Illinois 61801
(217) 337-1400
dpope@phebuslaw.com

CERTIFICATE OF SERVICE

I hereby certify that on September 24, 2008, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

Samuel Benjamin Zabek
LEITER GROUP
309-A Main Street
Peoria, Illinois 61602
Email: szabek@leitergroup.com
Represents Plaintiffs

Douglas J. Phebus
Peggy A. Lautenschlager
LAWTON & CATES
10 East Doty Street, Suite 400

P.O. Box 6925
Madison, Wisconsin 53701-2965
Email: dphebus@lawtoncates.com
Email: plautenshelager@lawtoncates.com
Represents Plaintiffs

Allan Horwich
Heidi Dalenberg
Paul Dengel
John C. Martin
SCHIFF HARDIN LLP
233 South Wacker Drive
Chicago, Illinois 60606-6473
Email: ahorwich@schiffhardin.com
Email: hdalenberg@schiffhardin.com
Email: pdengel@schiffhardin.com
Email: jmartin@schiffhardin.com
Represents Defendant CIB Marine Bancshares, Inc.

W. Stuart Parsons
Cristina D. Hernandez-Malaby
Natalie G. Maciolek
QUARLES & BRADY LLP
411 East Wisconsin Avenue
Milwaukee, Wisconsin 53202-4497
Email: wsp@quarles.com
Email: chernand@quarles.com
Email: ngiugno@quarles.com
Represents Defendants Donald M. Trilling, W. Scott Blake, Howard Zimmerman, Norman Baker, Jose Araujo

Bennett W. Lasko
Justin O. Kay
DRINKER BIDDLE GARDNER CARTON
191 North Wacker Drive
Chicago, Illinois 60606
Email: Bennett.lasko@dbr.com
Email: Justin.kay@dbr.com
Represents Defendant Dean Katsaros

John Kirtley
Howard A. Pollack
GODFREY & KAHN SC
780 North Water Street
Milwaukee, Wisconsin 53202
Email: jkirtley@gklaw.com
Email: hpollack@gklaw.com
Represents Defendant Steven Klitzing

Richard T. Greenberg
Angelo M. Russo

MCGUIRE WOODS LLP
Suite 4400
77 West Wacker Drive
Chicago, Illinois 60601
Email: rgreenberg@mcguirewoods.com
Email: arusso@mcguirewoods.com
Represents Defendant Donald Straka

Mara B. Zusman
David W. Goewey
VENABLE LLP
575 7th Street, N.W.
Washington, D.C. 20004-1601
Email: mbzusman@venable.com
Email: dwgoewey@venable.com
Represents Defendant J. Michael Straka

and I hereby certify that I have mailed by United States Postal Service the document to the following non-CM/ECF participants:

Kristi L. Browne
THE PATTERSON LAW FIRM PC
33 North LaSalle Street, Suite 3350
Chicago, Illinois 60602
(312) 223-1699
Email: kbrowne@pattersonlawfirm.com
Represents Plaintiffs

David E. Jones
HINSHAW & CULBERTSON LLP
456 Fulton Street, Suite 298
Peoria, Illinois 61602

s/ J.W. PHEBUS
J. W. PHEBUS
Attorney for Plaintiffs
PHEBUS & KOESTER
136 West Main Street
Urbana, Illinois 61801
Telephone: (217) 337-1400
Fax: (217) 337-1607
jwphebus@phebuslaw.com

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